October 20, 2011

SEIU
Stronger Together

CONNECTICUT
STATE COUNCIL

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

Statement by Paul Filson, Director of Service Employees International Union (SEIU) Connecticut State Council on proposed jobs initiatives for special session.– before the Commerce and Labor and Public Employees Committees

Good afternoon, Co-Chairs, and distinguished members of the Commerce and Labor and Public Employees Committees - I appreciate the opportunity to be here before you today. My name is Paul Filson and I am Director of SEIU's Connecticut State Council. The State Council represents over 55,000 active members in Connecticut. SEIU is Connecticut's largest union. We represent health care workers, building service workers, state/municipal employees and community college professors and staff. SEIU is also a member of SEBAC which has some concerns about public private partnerships (P3) as well as design build initiatives.

First I would like to say that the Legislature's and Governor's focus on jobs and job creation is the correct one. Undoing the damage caused by the great recession depends on the expansion of good jobs and the creation of good jobs that pay living wages and provide good health and pension benefits.

When you focus on public tax payer investment in jobs your focus needs to incorporate lessons-learned, best practices, and principles that protect workers and the public.

Specifically I would like to address the dangers of public private partnerships (P3) and design build schemes. In both cases, as Secretary Barnes stated, experience in the United States and Connecticut is spotty compared to Canada and Europe. Even worse, much of the experience we do have has been disastrous – leading to privatization of key state assets and often enormous cost overruns. For some of this think "Big Dig" in Boston or our own I-84 disaster.

Here are some principles for solid and successful P3 projects:

1. Partnerships must advance the public interest
    a. Government agencies, the legislature, unions, environmental and community advocates should all be part of the decision making process from the start
    b. Project selection must be driven by the public interest rather than respond to profit motives or promise of revenue from investors
2. Partnerships must be open and transparent
    a. Bidding must be standardized and transparent

Main Office:
77 Huyshope Avenue
Hartford, CT 06106
860.251.6091
Fax: 860.548.1935

77 Bedford Street
4th Floor
Stamford, CT 06901
203.602.6615
Fax: 203.964.0428

b. Here in CT these partnerships should go through the Contracting Standards Board and be subject to the principles of the clean contracting legislation you passed.

3. Projects must protect taxpayers
    a. Again, subjecting these projects to clean contracting standards that include cost benefit analysis is important.
    b. Contracts should be of shorter duration so that results can be analyzed.
4. Partnerships should be results driven
    a. For example, private parties should expect incentives for meeting objectives and penalties for failure.
5. Preserving and creating good jobs is critical
    a. Secretary Barnes should explain how these partnerships will create good jobs in the garages he spoke about. What about the janitor jobs and cafeteria jobs at Jackson Labs?
    b. There should be support for initiatives that encourage contracts with women and minority owned businesses.
    c. Public sector engineers have a crucial role to play in protecting the health safety, and welfare of the general public throughout the lifecycle of many of these projects

When it comes to design build projects we advocate caution – since these projects essentially outsource the entire project from start to finish. Design build has been used as the ultimate tool to privatize previously state supervised projects since the design, building, managing and inspecting of projects falls to, usually, very large companies. It has been very hard to hold them accountable for cost quality and safety.

There is a better way that can result in the same fast tracking that Secretary Barnes advocated. It is called Design Sequencing. Please see the attached summary of this method.

Thank you for allowing me to testify and I wish you the best of luck in designing a truly effective, transparent and accountable way to invest in job growth and expansion.

Principles for Successful Public Private Partnerships

America's global competitiveness hinges on a top-of-the-line transportation system and quality infrastructure. To maintain our edge, it is important to explore a range of financing options, including public-private partnerships, or P3s. These agreements between the public and private sector should rely on shared responsibility and shared risk.

P3s can be effective at the federal, state and local level, and cover a wide range of projects, including building and operating rail service, roads, bridges, tunnels, ports, airports, water and wastewater systems, parking structures, bicycle fleets and transit-oriented development. P3s can also achieve real results on environmental protection and create good-paying union jobs in the community. In order to provide benefits over the long-term, P3s must adhere to strong public interest safeguards.

As a coalition of labor, environmental, health and public interest groups, we embrace the following principles for governing these partnerships:

---

1) Partnerships must advance the public interest

- Partnerships must advance public values such as environmental protection, public health, equal access to opportunity, quality of life and good-paying jobs.
- Government agencies, legislative and executive bodies, unions, environmental advocates, community groups and the general public should all be part of the decision-making process from the start.
- Agreements must protect the public with a balanced and transparent approach to the pricing of tolls, fares and other fees to ensure access regardless of income.
- Projects must meet the highest possible standards for safety and maintenance.
- Project selection must be driven by the public interest rather than respond primarily to private profit motive or the promise of revenue from investors.
- Agreements must protect the public from loss of investment and interruption or degradation of service in the event of a private partner default.
- Development of P3 projects should focus on improving the operation of existing infrastructure not just building new infrastructure.

2) Partnerships must be open and transparent

- Bidding must be standardized and transparent.
- Public entities should be encouraged to bid alongside public-private partners, with projects awarded to the bidder that will deliver the most value for money over the lifecycle of the project.
- Bid documents, contracts performance reports and other major documents must be promptly accessible to the public.

3) Projects must protect taxpayers and transfer risks

- Partnerships should result in real overall risk transfer away from the taxpayer to the private sector, ensuring rewards are commensurate with risk.
- Responsible public entities must conduct a thorough cost-benefit analysis, commission an independent audit of demand and revenue forecasts, and evaluate effectiveness, to ensure that short-term gains do not come at the expense of longer-term public benefits. Such analysis should include economic, social, environmental and public health impacts of proposed projects.
- Contracts of shorter duration should be encouraged, as the likelihood of unforeseen problems rises with time and shorter agreements allow for greater flexibility.

4) Partnership agreements must be results-driven

- Partnerships must include outcome-based performance standards -- while allowing flexibility on how best to achieve those objectives.
- Private parties should expect incentives for meeting objectives and penalties for failure.
- Transportation partnerships should expand travel options. For example, toll road projects should expand transit options in the tollway corridor, where possible.
- Contracts should mitigate investor concerns about the impact of future policies on revenue and costs, without unduly restraining government from responding to changing social, economic, demographic or environmental conditions.
- Agreements should ensure periodic reporting on the achievement of performance measures and must be promptly accessible to the public.

5) Preserving and creating good-paying jobs is critical

- Partnerships must not be used as a tool to eliminate public sector jobs or undermine union representation or collective bargaining rights.
- Partnerships should support initiatives to contract with women and minority-owned businesses or create apprenticeship and job training programs.
- Public sector engineers have a crucial role to play in helping partnerships protect the health, safety and welfare of the general public throughout the lifecycle of the project.

Highway Robbery II

The Many Problems With Outsourcing Design, Engineering, Inspection & Supervision of Federally-Funded Transportation Projects: Increased Costs, Reduced Quality & Safety, and Little Accountability to the Public

A REPORT BY THE
NATIONAL ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION UNIONS (NASHTU)
DAVID KUSNET, AUTHOR
REVISED MAY 2007

About NASHTU

The National Association of State Highway and Transportation Unions (NASHTU) is dedicated to ensuring that federal transportation dollars are spent on cost-effective, safe projects that serve the public interest. NASHTU is comprised of 37 unions and associations representing hundreds of thousands of state and locally employed transportation engineers, technical workers and related public servants from throughout the United States.

About the Author

David Kusnet is a visiting fellow at the Economic Policy Institute. His articles and reviews have appeared in The New York Times, Washington Post, Los Angeles Times, Baltimore Sun, Newsday, American Prospect, New Republic, Commonweal, New Leader, and other newspapers and magazines.

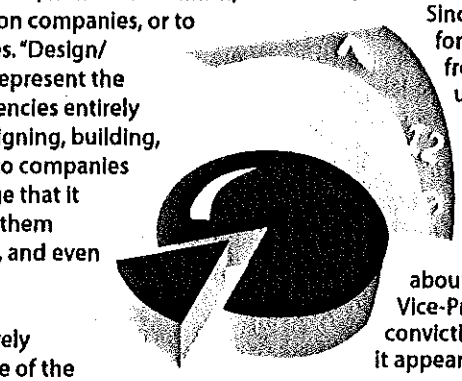
Additional Copies of Report

To request additional copies of this report, please call (916) 446-0584 or email us at nashtu@nashtu.us. This report is available on NASHTU's website: **www.nashtu.us.** You may also write to us at NASHTU, 660 J Street, Suite 445, Sacramento, CA 95814.

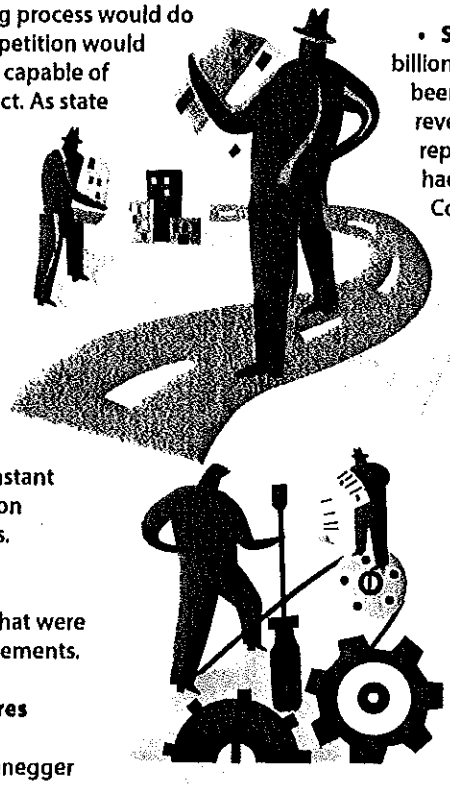
Highway Robbery II

Design-Build

Meanwhile, in an even more recent development, states are starting to outsource entire projects, from start to finish, to huge engineering and construction companies, or to partnerships among such companies. "Design/build," as this practice is called, can represent the ultimate in privatization – public agencies entirely entrusting the responsibility for designing, building, managing, and inspecting projects to companies or consortiums of companies so large that it is difficult, if not impossible, to hold them accountable for the cost, the quality, and even the safety of their work.



While design/build is still relatively new, it is not difficult to foresee some of the problems it will produce. The bidding process would do even less to control costs, since competition would be restricted to the large companies capable of performing every function in a project. As state and local governments contract-out entire projects, they would lose the professional capacity and the institutional memory to do the work in-house. And, far from working for public agencies, the large companies conducting these projects would end up managing everything themselves, including the state employees still involved – a situation that emerged with the Central Artery Tunnel project in Boston, which was plagued by constant delays, cost overruns, and construction problems such as leaks in the tunnels.



Already, cost, quality and safety problems are emerging on projects that were constructed under design/build agreements.

California's Design-Build Failures

In California, Governor Schwarzenegger is supporting transportation bills that would replace competitive bidding with design-build procurement. This would allow other, unspecified "non-weighted" factors to be considered "significantly more important than cost" when awarding contracts. In spite of this effort to expand their use, design-build arrangements have been failures for taxpayers and commuters on three important California highways:

• **SR 22 (Garden Grove Freeway):** Orange County Transportation Authority's design-build project to build twelve miles of car-pool lanes on SR 22 was supposed to have been completed and open in 2006, but work continues in 2007. Since the decision was made to use design-build for the project, the cost more than doubled from $271 million to $550 million! Charges of unfairness in the design-build procurement process have been documented. In an April 7, 2004 story on the SR 22 design-build project, the Orange County Register found "earlier this year two construction firms dropped out of the selection process, partly because of concerns of fairness." In a letter to OCTA about the design-build contracting procedure, the Vice-President of one of those firms wrote, "it is our conviction that it is a process far more subjective than it appears."

• **SR 73 (San Joaquin Hills Tollway):** This $1.5 billion design-build tollway opened in 1995 and has been "plagued by lower-than-projected traffic and revenue," according to the ***Los Angeles Times***, which reported on November 10, 2005, that the project had received a $1.16 billion bailout from Orange County. Without the emergency assistance, the project would have been in technical default on $1.9 billion in bonds as early as July, 2006.[93]

• **SR 91 (Express Lanes):** Built in 1995, the design-build, privately owned Express Lanes run through the middle of the congested Riverside Freeway. In 2002, the Orange County Transportation Authority had to buy the tollway because of a typical private toll road non-compete clause that did not allow for improvements on the non-toll lanes. Now, the taxpayers have to pick up the tab for the turnpike's debt of $135 million and pay the company $72.5 million in cash.

The problems with these three projects show that allowing private companies to design, build and operate tollways can delay highway construction and cost the taxpayers tens of millions of dollars more.

Meanwhile, in Indiana, the new eastside ramp that connects I-465 South to 70 East was supposed to allow more traffic to go through at faster speeds, while avoiding the truck rollover accidents that were all-too-frequent occurrences on the old ramp that it replaced. But, in the first two weeks after

Highway Robbery II

the new ramp opened in November, 2002, three semis rolled over, even though all three drivers were observing the 40 miles per hour speed limit. In response to this extraordinary accident rate, the state Department of Transportation lowered the speed limit to 35 mph and installed more signs and flashing lights. But, over the next eight-and-a-half months, there were six more truck rollovers, without any indications that the drivers were speeding or doing anything else that was unsafe.[34]

In an investigation of the hazardous ramp, WISH-TV in Indianapolis interviewed drivers who said that the curve was dangerous for truckers to negotiate at any speed. One driver said the stretch was especially hazardous if a truck is fully loaded, explaining: "Your wheels are turning. The freight is pushing the back of the tractor to your right as you're going to your left."

The entire $70 million project had been outsourced to a design-build partnership of Walsh Construction and Janssen and Spars Engineering, which Walsh later sued for its work on the project. WISH-TV concluded, "Contracting out project management and oversight compromises quality and safety and leads to finger-pointing."

A Better Way: Design-Sequencing — Fast Track Engineering

In California, the state Department of Transportation has developed a positive alternative to design-build for major state projects. With "Design-Sequencing," design activities are scheduled to allow each phase of construction to begin when the design for that phase of the work has been completed, instead of requiring that the design for the entire project be finalized before construction can begin. Under this system, a contract can be awarded for an entire project with plans that are as little as 30% complete. This allows the contractor to work with state engineers to incorporate innovative construction methods and designs to speed up project delivery and save money. To date, design-sequencing has delivered projects ahead of schedule and under budget in all regions of the state. In fact, projects have been completed an average of 10 months faster compared to following the traditional process.

While it is relatively new, design-sequencing offers two advantages over design-build:

First, instead of entrusting entire mega-projects to one company or one partnership of companies, as happened with Big Dig in Massachusetts, design-sequencing contracts are competitively bid. This ensures that the taxpayers receive the best price on infrastructure – and the funds needed for other transportation projects are not wasted.

Second, design-sequencing provides for state engineers to design and inspect projects, ensuring that the public safety and the public interest are protected. This is preferable to design-build arrangements, where the design, construction, inspection and often the management as well are performed by the same company or consortium of companies. Such a situation eliminates accountability and creates an inevitable incentive to cut corners on quality in order to generate more profits.